

**LAWYER'S ADVISORY COMMITTEE  
MINUTES  
DECEMBER 1, 2004  
TRENTON, NEW JERSEY**

**Chairperson Joseph Casello was absent so John Morton opened the meeting with Judges Gambardella, Ferguson, Lyons, Steckroth, and Stern in attendance. Also in attendance were Bruce Buechler, Frank Vecchione, Roberta DeAngelis, Barry Frost, Warren Martin Frank Velocci, Nona Ostrove, Patricia Delzotti, Mary Ellen Tully, Debrorah Reperowitz, Patricia Staiano, Jaimie Finberg, Scott Sherman, Ed Paul, Carlton Lewis, Jim Waldron, Scott Liddle and Jeanne Naughton.**

- 1. Call to Order and Minutes from meeting of September 8, 2004 were approved;**
- 2. Committee Reports:**

**A. Chapter 13 Rules Committee –**

**(1) Standard Form Order of Dismissal**

Debtor's Counsel Supplemental Fee Application **Jaimie Finberg raised the issue as to whether or not the standard form of Order Dismissing a Chapter 7 Case should be amended to allow for conversion to Chapter 7.** The issue had been initially raised by Isabel Balboa, Chapter 13 Standing Trustee. Three current orders of the court were referenced:

- (1) Order of Dismissal (Recommended Form revised 0/01/04);
- (2) Order Converting Case (Recommended Form Revised 7/01/04); and
- (3) Order on Motion/ Application to Dismiss/Convert Chapter 13 Case (Standard Form revised 5/13/03)

It was recognized that while the first Order does not provide for a conversion to Chapter 7 option, the third Order does. It is a three page order which contains check off boxes indicating that the case is alternatively dismissed; converted to a proceeding under Chapter 7; converted to a proceeding under Chapter 11; or allowed to continue under Chapter 13 upon certain terms and conditions. Whether or not this third order may resolve the issue(s) raised by Isabel's original e mail to the LAC dated 9/29/04 was also discussed. That is, the group considered whether or not the Standing Trustee could use this third order, where dismissal is requested and then conversion is raised by the debtor, and subsequently granted by the Court. If so, it was further noted that the fee for conversion (\$15) is not addressed, and that may be something which the group may want to consider.

In response to the above discussion, Jaimie Finberg advised that this third order may work at the hearing on Trustee's Motion to Dismiss, but it will not work when the issue of dismissal and

or conversion is raised at the confirmation hearing. Isabel Balboa currently utilizes a particular order dismissing a Chapter 13 case at the confirmation hearing, and the option to convert to Chapter 7 is not currently available in this order.

If the debtor's attorney would like the case to be converted to chapter 7 rather than dismissed, a request is usually made to the trustee to hold the dismissal order for 10 days to allow for the filing of an application to convert to Chapter 7. If the application is not filed, the dismissal order will be entered. This process currently requires a great deal of follow up for the trustee's office as well as court personnel. Judge Ferguson requested that the LAC put forth a specific proposal to the Court which would modify the existing form(s) to add an option to convert a case at the confirmation hearing, rather than simply dismiss. The proposal will then be reviewed by the Board of Judges.

## **(2) Standard Fee Allowable for Debtor's Counsel**

The November 29<sup>th</sup>, 2004 letter of attorney William Oliver to Joseph Casello and John Morton was discussed in which Mr Oliver as a member of the Consumer Bankruptcy Bar raises the issue of the "no look" fee for Chapter 13 attorneys fees and the fact that same has not increased for three or four years. The letter indicates that he does not have the staff to prepare fee applications in every case and if standard rates do not go up, he will be forced to hire additional staff to prepare fee applications in every case. Mr. Oliver's letter indicates that most of the cases are worth much more than the standard no-look fee, especially the cases which go for three or four years, and have numerous problems with them. The letter requests an LAC recommendation of an increase in fees. D.N.J. LBR 2016-1(j) was last amended March 8, 2001 to set the current fee "no -look" fee at \$2,000.

Nona Ostrove indicated her support for an increase in the fee. Representation of a client can take 3 to 5 years and involve a "myriad of services" including: objections to Trustee's motions, objections to proofs of claim, negotiating with secured creditors, analysis of cramdown issues, budget considerations, etc.

Judge Steckroth indicated that he would like to see put forward, a recommended appropriate fee. Judge Ferguson indicated that attorneys can be requested to review their time sheets as to what kind of time is fair - taking into consideration local factors such as the Chapter 13 Form Plan. Jim Waldron then spoke of the idea of a questionnaire which could be set up and sent out to gather this kind of information;.

## **(3) Changes to Local Form 13 – Debtor's Counsel Supplemental Fee Application**

Jaimie Finberg indicated that there is one final item to be discussed with respect to the

Chapter 13 Rules Subcommittee and that is the Local Form 13 - the Certification of Debtor's Counsel Supporting Supplemental Chapter 13 Fee. The LAC may currently consider whether to add/modify line items. J

Judge Ferguson indicated that this was something that could be considered by the Judges.

The specific issue was as follows:

Whether the following changes should be made to the list of proceedings included on Local Form 13: Certification of Debtor's Counsel Supporting Supplemental Chapter 13 Fee?

-The fee for filing and appearance on an amended Chapter 13 plan should be increased from \$150.00 to \$300.00.

-A separate category should be added for Objection to Certification of Nonpayment by Debtor with a fee of \$250.00.

## **B. Chapter 11 Rules Committee – Administrative Claims Procedure - Warren Martin**

Warren Martin reported that the Chapter 11 Rules Subcommittee met (including Ed Paul, Joe Casello, Pat Stiano, and Mary Ellen Tully) and that the group will have a proposed form administrative claim for the next meeting. Warren walked through the current analysis which includes sections 502(a) and 503(a). Pursuant to Section 503(a) an entity may timely file a request for payment of an administrative expense or may tardily file such request if permitted by the court for cause. Currently Official Form 10 cannot be utilized for this purpose, so one of three procedures occurs: (a) a proof of claim is modified; (b) a request for payment of an administrative expense is filed; or (c) there is a motion to compel payment of an administrative claim. There apparently is no uniform practice or local rule in any District nationwide. Judge Gambardella recognized that there currently exists a "haphazard" approach. The goal of the Subcommittee is to create a form for purposes of uniformity - like a proof of claim, this form would constitute a prima facie case of the validity of an administrative claim until an objection were filed. The proposed Administrative Claim Form will be presented at the next LAC Meeting and a Subcommittee of this Subcommittee may also be formed to meet with the Judges if necessary to discuss further implementation of this new proposed form and practice.

## **3. Clerk's Report**

Jim Waldron reported that filings have been dropping considerably, particularly

Chapter 11 Cases. The Court is down from 42,000 to 40,000 cases which constitutes a 4% to 5% decrease. In the month of November, there were 46 Chapter 11 filings, 28 of which involved the Trump case, and 18 were filed in the rest of the District. Our staffing is also down from 172 to 127 positions. Congress has passed a 4.3% increase which constitutes a decrease of 5% overall in the budget. There are similar projections for next year. The Court is however managing to keep up. CM/ECF handles 82 to 85% of all petitions filed - 85 to 90% of all docket entries are done from the outside through electronic means. Judges Fergusson and Wismur have advocated taking aggressive actions against non-compliant filers. There is also a national directive which requires that the Court offer its employees the ability to telecommute - eventually that could mean that as many as one half of the staff may be in the office only one half of the time.

#### **4. Liaison Reports:**

**District Court** - Frank Vecchione was unable to attend the District Court LAC meeting on 10/21 but referred to an item on its agenda concerning amending the current local rule regarding the sealing provision; also there is an agenda item requesting that the District Court LAC Subcommittee consider crafting a "mission statement." There was further discussion of a foundation to help fund pro bono cases similar to our foundation and golf outing - there was a proposal to utilize fees from pro hac vice admissions - there is a DOJ Joint Working Group on electronic technology - and Frank Vecchione will report back on this - the next District court LAC meeting is scheduled for January 27<sup>th</sup> 2005.

**US Trustee - (1)** Roberta De Angelis reported that her office had its annual Chapter 7 and Chapter 13 Trustees Regional Training - It constituted a full day of training and her Office saw different approaches and attitudes - she reported that overall the NJ Trustees are more aggressive; **(2)** Ust attorneys, analysts, and paralegals served on a criminal fraud task force and received commendation from the FBI on the work they are doing with credit card bust out cases and much of the credit for this work goes largely to attorney Martha Hildebrandt; **(3)** Each UST office is required to prepare an annual plan - of civil enforcement - addressing issues of fraud and abuse in the System, e.g. 707(a) cases and 727 complaints - ;

**IRS - No Report**

**N.J. Attorney General - Absent**

**NJ Bar-Bankruptcy Section** - Barry Frost reported that the Bankruptcy Section had a successful fall dinner honoring Jim Waldron. They are meeting to review legislative opinion 30 regarding the issue of attorney advertising. The Bench Bar is scheduled for April 1<sup>st</sup>, 2004 and topics

and people will be assigned.

**5. Old Business:**

**A. General Orders – Fax Signatures - done and published -**

**- Creditor Notification - to be approved by the Bd of Judges and published imminently**

**- Resolution of Certain Chapter 13 Payment Dispute Issues - to be approved by the Bd of Judges and published imminently**

**- 363 Sales Order- approved by the Bd of Judges and to be published imminently**

**6. New Business** - Discussion focused on ways to receive better input from the Bar - sending out hard surveys - e mails etc., to solicit their participation in the LAC - reference was also made to the LAC Link on the Court's Web site which needs updating - a small Subcommittee will be formed to solicit this participation from the bar.

**7. Fix Date for Next Meeting** - March 2005